

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

PAUL J. NEWTON,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD72558

Date: October 25, 2011

Appeal from:
Buchanan County Circuit Court
The Honorable Daniel F. Kellogg, Judge

Appellate Judges:
Division One: Alok Ahuja, Presiding Judge, Thomas H. Newton and James E. Welsh, Judges

Attorneys:
Susan L. Hogan, Kansas City, MO, for appellant.
Shaun J. Mackelprang and Mary H. Moore, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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WD72558

Buchanan County

Before Division One Judges: Alok Ahuja, Presiding Judge, Thomas H. Newton and James E. Welsh, Judges

At a hearing on June 10, 2008, appellant Paul Newton pled guilty to the felony of attempt to produce a controlled substance and to the misdemeanor of domestic assault. He later filed a motion for post-conviction relief under Supreme Court Rule 24.035, alleging that plea counsel was ineffective because counsel failed to inform him that the plea hearing would address both the felony and misdemeanor counts, and that counsel had failed to fully investigate possible defenses to the misdemeanor domestic assault charge. The motion court denied Newton relief on the basis that his arguments only challenged the effectiveness of counsel's representation with respect to the *misdemeanor* domestic assault charge, but that Rule 24.035 is limited to claims for relief involving convictions for *felonies*. Newton appeals.

AFFIRMED.

Division One holds:

Rule 24.035 only provides a criminal defendant with a right to post-conviction relief in connection with convictions for felonies, and particular post-conviction claims may therefore only be considered to the extent that they relate to such felonies.

Here, Newton's Amended Motion for post-conviction relief does not directly attack the voluntariness of his guilty plea to the felony drug charge. Instead, he argues that counsel had failed to adequately investigate a separate misdemeanor charge, and claims that, if counsel had conducted a fuller investigation of the misdemeanor charge, Newton would have refused to plead guilty to *either* the misdemeanor or the felony.

We accept, for the sake of argument, that Rule 24.035 applies to a claim that counsel's inadequate investigation of a misdemeanor influenced a movant to plead guilty to a separate felony. Even on that assumption, however, it would be a fact-bound question whether in a particular case a movant's decision to plead guilty to a felony was causally related to the deficient investigation of an associated misdemeanor.

By finding that Newton had failed to prove a claim cognizable under Rule 24.035, the motion court necessarily disbelieved his claim that a further investigation of the misdemeanor would have led him to refuse to plead guilty to the felony charge. That finding is not clearly erroneous. The prosecution had insisted at the plea hearing that Newton plead guilty to both crimes in order to avoid the filing of enhanced charges as to both offenses. Newton stated at the plea hearing that he was willing to plead guilty to the felony drug charge, and had no defense to that charge. When the court advised him that he would have the right to present a claim of self defense in response to the misdemeanor domestic assault charge if he refused to plead guilty and went to trial, Newton acknowledged that he was waiving his right to do so. Newton voiced no concerns at the plea hearing or his subsequent sentencing concerning the adequacy of counsel's representation on the misdemeanor charge, although invited to do so. Finally, Newton faced substantially more severe punishment on the felony than the misdemeanor, and faced the prospect of considerably greater sentences on each charge if the prosecutor enhanced both to Class A felonies (as the prosecutor had promised to do unless Newton pled guilty). In these circumstances, the motion court could properly find that Newton preferred to be sentenced on the existing, unenhanced drug charge – to which he admitted he had no defense – even if this meant waiving a potential defense to the misdemeanor.

Opinion by: Alok Ahuja, Judge

October 25, 2011

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